

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1007V

Filed: August 2, 2017

UNPUBLISHED

PATRICIA J. CHAFFIN

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Petitioner,

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v.

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Attorneys' Fees and Costs;
Special Processing Unit (SPU)

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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*Ramon Rodriguez, III, Rawls, McNelis and Mitchell, P.C., Richmond, VA, for petitioner.
Ryan Pyles, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On September 11, 2015, Patricia J. Chaffin ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleged that she suffered debilitating left shoulder pain, weakness, encumbered dexterity and brachial neuritis as a result of receiving an influenza ("flu") vaccine on September 18, 2012. On December 7, 2016, the undersigned issued a decision awarding compensation to petitioner based on the parties' joint stipulation. (ECF No. 35).

On May 19, 2017, petitioner filed a motion for attorneys' fees and costs. (ECF No. 40). Petitioner requests attorneys' fees in the amount of \$40,475.80, and attorneys'

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

costs in the amount of \$1,305.82 for a total amount of \$41,781.62. Petitioner's Motion for Attorneys' Fees and Costs ("Pet. Motion") at 3-4, 7-8, 8 (ECF No. 40). In compliance with General Order #9, petitioner filed a signed statement indicating she did not incur any out-of-pocket expenses. Exhibit 34, filed as Attachment #3 to Pet. Mot.

On June 1, 2017, respondent filed a response to petitioner's motion. (ECF No. 41). In his response, respondent argues that "[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs." *Id.* at 1. Respondent adds, however, that he "is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." *Id.* at 2. Petitioner "respectfully recommends that the Chief Special Master exercise her discretion and determine a reasonable award for attorneys' fees and costs." *Id.* at 3. Petitioner did not file a reply.

Petitioner seeks attorneys' fees in the amount of \$40,475.80, which reflects the following hourly rates:

- 1) \$348 for work performed in 2014 by Dr. Rodriguez;
- 2) \$361 for work performed in 2015 by Dr. Rodriguez;
- 3) \$375 for work performed in 2016 by Dr. Rodriguez;
- 4) \$389 for work performed in 2017 by Dr. Rodriguez;
- 5) \$126 for paralegal work performed in 2013;
- 6) \$131 for paralegal work performed in 2014;
- 7) \$135 for paralegal work performed in 2015;
- 8) \$140 for paralegal work performed in 2016; and
- 9) \$145 for paralegal work performed in 2017.

Pet. Motion at 3-4. The undersigned has previously awarded attorneys' fees based upon the same 2014-2016 hourly rates requested in this case for work performed by this attorney and at least one of the paralegals. See *Zdroik v. Sec'y of Health & Human Servs.*, No. 15-468V, 2017 WL 767852 (Fed. Cl. Spec. Mstr. Feb. 3, 2017). These rates are within the ranges set forth in the Office of Special Masters Attorneys' Forum Hourly Rate Fee Schedule: 2015-2016 which can be found on the court's website.³ The undersigned also finds the hourly rates requested for work performed by paralegals in 2013-2017 to be reasonable.

The undersigned finds that an increase in the hourly rate is warranted for work performed by this attorney in 2017, but calculates the 2017 rate for Dr. Rodriguez using the increase in the Producer Price Index – Offices of Lawyers ("PPI-OL").⁴ Thus, the

³ <http://www.uscfc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule2015-2016.pdf> (last visited on July 5, 2017).

⁴ The increase in PPI-OL was recently used to calculate a new schedule for 2017 forum rates. See Office of Special Masters Attorneys' Forum Hourly Rate Fee Schedule: 2017 ("2017 Fee Schedule") at

undersigned will award attorneys' fees based upon an hourly rate of \$383 for work performed in 2017 by Dr. Rodriguez.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based the above, the undersigned finds that petitioner's counsel is entitled to reasonable attorneys' fees and costs as follows:

Total Amount of Attorneys' Fees Sought	\$40,475.80
5.3 Hours Reduced from an Hourly Rate of \$389 to \$383	<u>- \$31.80</u>
Total Amount of Attorneys' Fee Awarded	\$40,444.00
Total Amount of Attorneys' Costs Awarded	\$1,305.82

Accordingly, the undersigned awards the total of **\$41,749.82**⁵ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel, **Ramon Rodriguez**.

The clerk of the court shall enter judgment in accordance herewith.⁶

IT IS SO ORDERED.

s/Nora Beth Dorsey
 Nora Beth Dorsey
 Chief Special Master

<http://www.uscfc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule-2017.pdf> (last visited on July 5, 2017).

⁵ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁶ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.